LITTLE BLUE BOOK NO. 1378
Edited by E. Haldeman-Julius

The Notorious Case of Sacco and Vanzetti

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CONTENTS

		Page
I.	The Crime	5
II.	The Trial	12
III.	The New Evidence: the Judge and the Times	28
IV.	Public Criticism	43
V.	The Lowell Committee and Its Report	49
VI.	The End: Execution and Persecution	56

THE NOTORIOUS CASE OF SACCO AND VANZETTI

A COMPLETE SURVEY

I. THE CRIME

The case of Sacco and Vanzetti has achieved such worldwide interest that it seems hardly possible that anyone conversant with current affairs can be ignorant of the circumstances of the crime which provided the excuse, at least, for all that has followed after it. Yet one finds that while the later events are well known, these original circumstances are, in the popular mind, generally shrouded in vagueness. For the purposes of this survey, then, it is important to fix at the outset the definite facts which form the basis of the succeeding developments; and it is valuable not only to recall these facts for the sake of clearness, but to establish them as a ground of judgment in the welter of irrelevance and prejudice which has accumulated about them. For one of the chief protests against the conduct of the case has been the frank charge that Sacco and Vanzetti were being tried because they were radicals and foreigners; whereas the only basis of guilt, to all fair or sane people, is their possible complicity in a simple crime of murder.

It takes little time to resume the details of the South Braintree crime. Frederick A. Parmenter, paymaster of the shoe factory of Slater and Morrill, and his guard, Alexander Berardelli, left the office of the company on the afternoon of April 15, 1920, at about three o'clock. They carried two boxes containing the payroll, a sum of $15,776.51, which they were

taking to the shoe factory directly through the main street of South Braintree, Massachusetts. Two men armed with pistols fired upon and killed them. As the murder was being done, an automobile in which were several other men stopped at the spot; the criminals threw the two boxes into it, and, jumping in themselves, were driven rapidly away across the railroad tracks nearby. Two days afterward their car was discovered abandoned in woods some distance away; but the tracks of a smaller car led from this place, a fact which supplied a clue leading to the arrest of Sacco and Vanzetti.

To understand this result we must turn to another crime of similar nature committed previously in the nearby town of Bridgewater. It appeared that in both crimes a gang was involved; in both the murderers had escaped in an automobile; in both eye witnesses thought they were Italians. In the Bridgewater case the car had made off toward Cochesett, and the chief of police of Bridgewater, Mr. Stewart, was therefore concerned in tracking an Italian in Cochesett possessing or driving a car. In a garage in Cochesett the car of a man named Boda was awaiting repairs and Chief Stewart believed Boda connected with the crime. He asked the proprietor of the garage, Mr. Johnson, to telephone the police when someone came for it. He investigated Boda's circumstances as well, and found that he had been living in Cochesett with Coacci, a radical who had been summoned to a hearing concerning his deportation and who had failed to appear.

As the Department of Justice was at that time searching out all "Reds," Stewart went to see Coacci on April 16, the day after the

holdup in South Braintree, to ascertain the cause of his failure to appear. He found the Italian radical packing his trunk and evidently intent on returning to Italy at once. In Stewart's mind the trunk and Coacci's haste to leave were not then connected with the murders in South Braintree; but later, when the tracks of a smaller automobile were discovered near those of the car used by the escaping gang, he suspected that this car belonged to Boda, that, as Boda and Coacci had associated in Cochesett, the latter's hasty departure was connected with the murder of Parmenter and Berardelli, and that his trunk held the booty of the holdup. He came to the conclusion that Coacci, as Boda's assistant, had made off with it; while as a matter of fact the trunk, later examined on arrival by the Italian police, held no evidence of the robbery.

But Stewart meanwhile centered his efforts about Boda and considered that whoever should call for his car in the Johnson garage might well be suspected of the South Braintree murders. Boda and three other Italians came for it on the night of May 5. Two of them were Sacco and Vanzetti; the third, Orciani. Mrs. Johnson telephoned the police; but as the car was not yet ready, the four left. However, Sacco and Vanzetti, taking a street car for Brockton, were arrested on the car. Boda and Orciani left on a motorcycle. Orciani was arrested the following day, but Boda disappeared.

Chief Stewart now tried to follow out his theory of the commission of both the Bridgewater and the South Braintree murders by one gang, but it did not hold up. Orciani had been at work on the days of both crimes, and having this alibi, was released. Sacco, who worked

regularly in a shoe factory in Stoughton, had, however, taken a day off on April 15, the date of the South Braintree holdup; therefore he was charged with the murder of Parmenter and Berardelli, but could not be indicted for the previous crime in Bridgewater. Vanzetti was a fish peddler in Plymouth, and as he was his own employer, could not produce the same type of alibi as the others; consequently, he was retained for both murders. Vanzetti was given a separate trial for the Bridgewater affair, and he and Sacco were tried together for the South Braintree crime. Charged with murder on May 5, 1920, they were indicted on September 14 of the same year and came to trial May 31, 1921, at Dedham in Norfolk County: the presiding judge at both Vanzetti's separate trial and the joint trial of the two was Webster Thayer of Worcester.

The main facts have now been outlined in the course of events which placed the two defendants in their desperate position and we must return to consider other elements. In the first place, why had Boda, Orciani, Sacco and Vanzetti called at the Johnson garage in Cochesett on this particular night of May 5, a fact which led to their arrest? To answer this question we must recall the times. For these were the days of the anti-Red hysteria throughout America, the days of Attorney-General Palmer, of wholesale deportations of "Reds," of all sorts of strange and often outrageous proceedings under the name of law and in behalf of the safety of the state. Proceedings for deportation had gone on by the wholesale under Palmer in the spring of 1920, the time of both crimes.

There was one particularly unsavory affair,

the case of the radical Salsedo, the events of which were taking place just at this period. Salsedo was held incommunicado in a room in the office of the Department of Justice in New York, on the fourteenth floor of a Park Row building. It happened that Boda and the others were friends of this radical, and they were desperately concerned when on May 4 they heard that Salsedo had been discovered dead on the sidewalk outside the Park Row building. "Red" raids had also taken place. They were frightened, as radicals suspected by the Department, and they set about at once to "hide the literature and notify the friends against the federal police." To carry out these objects they wanted an automobile and applied to Boda; therefore, following the news about Salsedo on the 4th, they came to the Johnson garage for Boda's car on the 5th.

The characters of the men themselves deserve some attention. Sacco's employer testified concerning him that he was a steady and reliable worker, never late to work except occasionally on account of sickness. Evidently, however, he talked of quitting some day and returning to the old country. On April 15 he had taken a day off, and hence could be charged with the South Braintree crimes. Vanzetti, charged with both, was an older man and apparently industrious at his trade of fish peddler; his record, like Sacco's, appeared perfectly clean. How was it, then, that these two honest and diligent workers had become suddenly associated with a murder and holdup gang?

The separate trial of Vanzetti as guilty of the Bridgewater crime of December 24, 1919, is of special importance. This prosecution grew

out of his arrest for the Parmenter-Berardelli murders and the evidence of identification was of the most trivial character imaginable. Finally Vanzetti was known to be the criminal because a little newsboy, hiding behind a telegraph pole at the scene of the murder, had glimpsed the murderer and knew by the way he ran that he "was a foreigner." In a district which abounds in foreigners, and especially in Italians, Vanzetti was the man because, of course, he was a foreigner. Four months after the crime several shells were found on him as well, and one of these was said to be of a type similar to the shells found at the place of the holdup. Their possession by Vanzetti, however, was accounted for at the later Dedham trial as perfectly innocent. Besides, more than twenty people, all Italians, testified to having seen Vanzetti in Plymouth on December 24, some even remembering their purchase of eels from him for the Christmas Eve feasts. Because his counsel feared that his radical opinions would be exposed and count badly against him, he was not allowed to take the stand, though he strongly protested his innocence. And from a sentence of from twelve to fifteen years in prison this counsel took no appeal. The judge and district attorney were, of course, Webster Thayer and Mr. Katzmann. Vanzetti's counsel, a Plymouth lawyer, John Vahey, afterward became a partner of Katzmann. The defendants, becoming suspicious of him, dismissed him without ceremony.

Moreover, the chief of police of Plymouth, wishing to testify to Vanzetti's good reputation there, was not permitted to do so. Not one point of exception was taken by Vahey, the counsel, later partner of Mr. Katzmann,

throughout the trial. The chance of appeal was allowed to slip, and even had Vanzetti been cleared of the South Braintree murders, he would have had before him years of imprisonment on his first conviction. Still, at the Dedham trial later, the chief of police and another officer took the stand to give evidence of Vanzetti's good reputation, but it was ruled out by Judge Thayer, because evidence of good reputation was inadmissible in the case of a man afterward convicted of crime. The Bridgewater charge and trial of Vanzetti have been declared a frame-up by eminent authorities; yet this was the conviction which made evidence of character inadmissible later.

There is another matter which must be noted. In spite of the fact that Chief Stewart considered both men connected with the two separate crimes, the head of the State Police did not agree with him, but always held that the murders were the work of professionals. From all available evidence Sacco and Vanzetti decidedly could not be so described.

The Bridgewater conviction of Vanzetti was made the most of in the later trial. This first affair was, moreover, an excellent foretaste of what was to come. Dedham is a quiet suburb of Boston, residential and well-to-do, with a sprinkling of New England small farmers. Indeed, part of the jury was selected by sheriff's deputies from people considered "representative citizens," "substantial," and "intelligent." The courthouse itself was opposite the old home of Fisher Ames. The counsel for the defense was Fred H. Moore, a Westerner unfamiliar with the traditions of the Massachusetts bench or the characteristics of Judge Thayer, an "outsider," a radical and profes-

sional defender of radicals, and therefore, as such matters affect the conduct of a case, a provoker of hostility rather than an inspirer of confidence. Sacco's and Vanzetti's English was very broken, and the record displays how many times they misunderstood questions. A court interpreter was obtained, but his conduct became so suspicious (and indeed some time after the trial he was convicted of larceny) that the defendants obtained their own to check his questions and replies. In this atmosphere, with a highly respectable jury in a highly respectable Boston suburb, a milieu of Yankee conservatism if any were ever known, these two Italian aliens, laborers, speaking poor English, radicals in opinion, draft-dodgers in war, were tried in a period notable for its anti-Red hatred, frantic conservative patriotism, and illegal abuse of constitutional rights. Their trial lasted almost seven weeks, and on July 14, 1921, they were declared guilty of murder in the first degree.

II. THE TRIAL

The evidence which could convict these two men must rest on the single issue of identity, for the killing was not questioned. Were Sacco and Vanzetti the murderers or were they not? This was the only question at stake, and upon it a tremendous quantity of very conflicting evidence was adduced, not the same against both men. I shall summarize this evidence as clearly and briefly as possible.

The prosecution used the theory that Sacco shot Berardelli while Vanzetti sat in the automobile as a collaborator in a conspiracy to murder. It produced fifty-nine witnesses, while the defense had ninety-nine. The state's wit-

nesses gave evidence of having seen both men in South Braintree the morning of the crime, claiming to have recognized Sacco as the man who shot Berardelli, and to have seen him escape in the car. Expert testimony, of the most important character, attempted to connect one of four bullets taken from Berardelli's body with the Colt pistol carried by Sacco when first arrested. Vanzetti's position in the car was maintained by further testimony; lastly, the evidence for "consciousness of guilt" on the part of both men was developed from the pistols found on them and from lies told by them on arrest. The defense brought over eye witnesses, more numerous, who denied that the men observed were Sacco and Vanzetti; this was confirmed by the testimony of alibi witnesses, who supported the assertion of Sacco that he was in Boston on April 15 obtaining a passport to Italy, where he intended soon to return to see his bereaved father. An official of the Italian consulate gave evidence that Sacco had arrived at the consulate at 2:15 p. m., which made it impossible for him to have participated in the crime. Vanzetti's alibi, that on April 15 he had worked as usual as a fish peddler, was supported by witnesses who had been his customers at the time. Therefore the question narrowed down, for evidence was as numerous on one side as on the other, to the trustworthiness of the witnesses who held that the two men were in South Braintree on April 15.

First, there were five persons who testified that Sacco was either in the automobile or on the scene of the crime: Carlos E. Goodridge, Louis Pelzer, Lola Andrews, Francis Devlin, and Mary E. Splaine. Miss Splaine was a star witness: with Miss Devlin she had been working on the second floor of Slater and Morrill's factory,

where windows gave a view of the railroad crossing nearby; she heard the shot and hurried to the window, to observe a car crossing the tracks. She saw, from a distance of sixty or eighty feet, a man unknown to her, in an automobile traveling from fifteen to eighteen miles an hour, for a space of about thirty feet, or practically for from one and a half to three seconds.

After Sacco's arrest he was brought alone before Miss Splaine, in violation of the usual methods for the identification of suspects, which require the use of a "parade" of persons of the suspect's class and type, among whom the witness must identify the individual seen by him. The omission of the "parade," repeatedly found a necessary and indispensable safeguard against tricks of memory or imagination in the witness or unfairness in the police, was one of the notable irregularities in this case. However, in spite of it, at the preliminary hearing three weeks later, Miss Splaine could not identify Sacco as the man she had seen, claiming there had not been sufficient time to observe him. But in the Dedham trial, a year after the crime, she identified him positively as the criminal, remembered and described from a fleeting vision of a few seconds' length sixteen different personal details, even the size of his hand and the fact that his hair was between two and two and a half inches long.

Confronted with the discrepancy between her earlier and later testimony, she claimed inaccuracy in the transcript of the stenographer's minutes, then withdrew this charge, and finally maintained merely that she was now certain of her last evidence. Later she rested this identification on the observed "good-sized hand" of Sacco, a fact which did not exist, for Sacco had hands even smaller than the average. After the trial it developed that she had once iden-

tified another as the person later claimed to be Sacco, but it appeared that this person previously identified was in jail on April 15, 1920. The credibility of such a witness is certainly open to some doubt at least. There was no doubt whatever as to Dr. Morton Prince, professor of abnormal and dynamic psychology in Harvard University, who stated plainly that such detailed remembrance as she claimed was psychologically impossible, and that she had arrived at an unconscious falsification of memory through her opportunity to study Sacco at length in court.

Miss Devlin, the companion of Miss Splaine, likewise could not positively identify as Sacco, a month after the murder, the man seen by her, but a year later was certain that he was the defendant, affirming that she had never had the least doubt of it. But two other eye witnesses, Furguson and Pierce, who saw the crime from a window above Miss Splaine and Miss Devlin on the next floor, could make no identification and were certain that they could not do so even though aided by pictures.

Louis Pelzer, a young shoe-cutter, testified to hearing the shot, pulling up his window, and seeing the murderer of Berardelli. He remained in the window about a minute. On this basis he identified Sacco as the man he saw. But immediately following Sacco's arrest he had been unable, like the others, to make any identification, saying he had not seen enough. Three of his fellow workmen bore out this last admission: two with the testimony that he had taken shelter under a bench instead of pulling up his window; the third saying that Pelzer had admitted he did not see anyone. These discrepancies in his evidence drew from the prosecutor, Mr. Katzmann, applause and even

high praise in his effort to have Pelzer accepted as a reliable witness.

Mrs. Lola Andrews, considered a person of dubious reputation, gave some of the strongest evidence for the prosecution. At about 11 a. m. on April 15, 1920, accompanied by an elderly woman, Mrs. Campbell, she saw a car standing before Slater and Morrill's factory in which was a "very light" man (evidently neither of the defendants), while a "dark-complexioned man" bent over the hood. She did not talk with them then, but entered the factory seeking a position: on coming out a quarter of an hour afterward she found the dark man now under the car, and asked him how to get to another factory. This was all that passed between them. When Sacco was arrested, the police took her to Dedham and she identified him as the "dark-complexioned man" she had talked with. She repeated this evidence at the trial, saying that when she had heard of the crime she "somehow associated" the man under the car with it. Here was certainly important material, yet four reliable witnesses discredited her entirely.

Mrs. Campbell, her companion, testified that Mrs. Andrews had not talked with either of the men at the car but had asked her question of a man "in khaki clothes" nearby. Harry Kurlansky, a friend of Mrs. Andrews and a Quincy business man, testified that she had told him that the government had wanted her to recognize the defendants, that she knew nothing about them, had never seen them and so could not recognize them. Thereupon, Judge Thayer thought fit to submit Mr. Kurlansky to a series of questions on his reason for not trying to discover the name of the government

agent who was attempting to obtain recognition of the men from Mrs. Andrews. Why should Kurlansky have been supposed to search out this information? For as he himself said, when questioned by defense counsel, "Why should I bother about it?" Nevertheless, this uncalled-for questioning by the judge insinuated that it was his duty to have done so, thereby undoubtedly discrediting the witness to the jury and helping to annihilate valuable evidence of the defense.

In February, 1921, Mrs. Andrews had notified the police of an assault made upon her in her Quincy apartment: George W. Fay, a policeman investigating this, testified that he talked with her and that she declared that she could not tell whether her assailant was one of the South Braintree criminals because she had not seen the faces of the murderers, and could tell nothing about their appearance or their clothes. In addition, a Quincy journalist and secretary of the town's Chamber of Commerce, D. Alfred Labrecque, swore that he had had a conversation with Mrs. Andrews of practically the same nature as Fay's. Evidently, then, this witness was largely discredited; yet the prosecutor insisted to the jury that she was highly reliable and convincing in every way.

Carlos E. Goodridge was in a poolroom in South Braintree when the crime was committed; he heard the shots, went to the door, saw a car approaching him, and when he reached the sidewalk a man in it "poked a gun over towards him." He reentered the poolroom. . . . It was seven months afterward when he first identified Sacco as this man; and he repeated the identification at the trial. But there were four witnesses who entirely

discredited all this. Andrew Manganaro, his employer, heard of the crime from him an hour later, when Goodridge made no identification of anyone. Afterward, when the arrest of the defendants occurred, Goodridge told Manganaro that he could not go and recognize them as the men he had seen because he had been so "scared" at the time that he had run in at once and could not possibly remember their faces. The employer also testified that Goodridge's reputation for truthfulness was bad; in this he was not contradicted. Furthermore, B. Magazu, operating the poolroom and shoe store combined, said that Goodridge had come in and told him of the crime, that the criminal who had "pointed with a gun" had light hair and complexion and wore an army shirt, adding that "this job wasn't pulled by any foreign people." C. Arrogni, a South Braintree barber, testified that in a conversation a week after the murder, Goodridge had admitted that he could not tell who the man in the car was; and Arrogni's boss, Damato, gave the same evidence.

Besides all this, other matters enter here: Goodridge, as a witness for the state, was also faced at this time with the prospect of jail under a larceny indictment to which he had pleaded guilty. The case had been filed, in other words, no sentence given, and Goodridge put on probation. The defense attempted to show that his evidence was therefore affected by leniency shown him by the district attorney in the larceny matter, and by fear of losing immunity, but the judge refused to allow this, being later sustained by the Supreme Court of the state.

Nevertheless, Professor Frankfurter of the

Harvard Law School, who made a detailed study of the whole case, took this matter to three experts in the law of evidence on the faculty of the School, and these men expressed the opinion that the judge's ruling was indefensible: and this was not, unfortunately, the only error of Judge Thayer in the trial. Goodridge also was afterward found to have been a fugitive from justice from another state and to have testified under a false name.

The state attempted to place Vanzetti in the murder car, and brought four principal witnesses to support this theory: Harry E. Dolbeare, Le Vangie, Faulkner, and Reed. Faulkner claimed he had seen Vanzetti on a train from Cochesett to Boston, and that he got out at East Braintree at 9:45. The basis of his remembrance was exceedingly frail and it was wholly destroyed by three other witnesses, Brooks, McNaught, and Pratt, railroad men. Reed, a crossing tender, claimed that Vanzetti had been the man on the front seat of an automobile, seen elsewhere more than an hour after the crime, which he said was the murder car. The state, however, itself placed Vanzetti on the rear seat. Reed also said that the English of the man seen by him was "unmistakable and clear" yet Vanzetti's speech was so crude that an interpreter had to be called in. Dolbeare testified that he had seen the defendant hours before the murder, between 10 and 12 a. m., when he noticed a car that passed him in South Braintree in which were five foreigners who impressed him as strangers and "a tough looking bunch." He could not describe the men on the front seat, did not know whether those in back had mustaches or beards, nor what kind of cap was worn by one of them

who leaned forward, thus attracting his attention. This man he nevertheless identified as Vanzetti. Le Vangie, gate keeper of the N. Y., N. H. and H. Railroad is then left as the only witness who claimed to have seen Vanzetti on the spot at the time of the murder.

He testified that an automobile approached as he was putting down the crossing gates, and a man in it obliged him at the revolver's point to let the car pass before the oncoming train. Le Vangie claimed that the driver was Vanzetti. However, he was discredited by McCarthy, a fireman, who three quarters of an hour afterward talked with him. According to McCarthy, Le Vangie said that some men went by in a car, that he heard the shots and began to lower the gates, when one of the men pointed a gun at him and he ducked into his shanty. He said he did not know the men and would not if he saw them again; that in his fright the only thing he saw was the gun. In addition, all the other indentification witnesses on both sides discredited him, insisting that the driver was young, light-haired, and small, whereas the defendant was dark and middle-aged and wore a mustache.

The prosecutor therefore had to abandon his testimony, but tried to retain his identification, and in summing up asked the jury to believe that although Le Vangie had said Vanzetti was in front driving, he really meant he was on the back seat. This sort of tortuous argument is enough to brand the methods of the prosecution from the start. What is to be thought then, when it appears that the prosecutor at the time was in communication with the only two people who had had any real chance to observe the driver and who were not called by him? These witnesses, Kelly and Kennedy, had already had interviews with

him, had given him written statements, and their detailed description of the driver wholly excluded the defendant. Their reliability was never challenged, but till much later they were unknown to the defense and hence did not give evidence in its behalf at the trial!

On the other hand, Vanzetti was able to produce a splendid alibi. Thirty-one eye witnesses swore that he was not one of the men seen in the car. Thirteen gave direct evidence that he was in Plymouth as a fish peddler on April 15 or corroborated the same statement.

Two other items of evidence were likewise inconclusive. One was a cap claimed to have been Sacco's and found on the spot of the crime, which his employer said might have been a cap of the defendant's, as he ordinarily hung one like it on a nail while at work. Nevertheless he denied explicitly that he meant to state it was Sacco's, and Mrs. Sacco testified that her husband never wore a cap with earflaps, as this was. The other item was the revolver found on Vanzetti, said to have been snatched by him from Berardelli during the murder; but no one could testify that Berardelli carried a gun at the time, nor had anyone seen the murderer take it. Berardelli had a new spring put in his revolver in March, 1920, but no testimony was given to show that the spring in Vanzetti's gun was new; besides, two experts gave evidence that the spring in it was no newer than any other part, and another witness swore to having sold the gun to the defendant.

The testimony concerning the hammer of the revolver was inconclusive, and nothing, in short, indicated that the gun had once belonged to Berardelli. To return to the evidence of the prosecution witnesses, it is evident that from the point of view of the trust-

worthiness and truth of the identification, the state's case was fatally weak in almost every particular. Indeed, when Judge Thayer later denied motions for a new trial, he voluntarily abandoned identification as the basis of the verdict. He admitted that the defense had called more witnesses than the prosecution to prove that the two men were not in the car; he went on to say that the convicting evidence was the defendants' "consciousness of guilt." As it has been stated at the beginning of this section that the trustworthiness of identification was the sole reliable ground for a conviction, we must examine very carefully this matter of "consciousness of guilt," on the strength of which Sacco and Vanzetti were condemned to death.

If the two defendants had conducted themselves as murderers after the date of the murder to such a degree as to show unmistakable consciousness of their guilt for this particular crime, the evidence thereof could be considered pertinent to condemn them. Their conduct before and after arrest on the evening of May 5, their possession of firearms, and the lies which they told constitute the ground on which inferences of guilt can be drawn. We must observe, however, that they never had any previous adventures in hold-ups or association with criminals, never appeared to have obtained any of the sixteen thousand dollars of booty, never altered afterward their financial condition, method of life, or status of employment, and never had previously been accused of crime. In the three weeks after the crime and before the arrest they did not hide or escape with the plunder, or take false names, but lived on at their usual lodgings, followed their trades as always, even participated in radical meetings. All this they did very close to the

spot where they were said to have acted as robbers and murderers. Was there any appearance of "consciousness of guilt" in this conduct?

The evidence on the matter, then, amounts to this: The two men came with the others to the garage for Boda's car. Mrs. Johnson went to a neighbor's to telephone the police, the men following and returning with her. They were advised by her husband not to drive the car without that year's license plates; they seemed to assent, and left. On the basis of this the judge put it to the jury that if they had left because of the reason just given, no evidence was to be found; but if they went away because they realized that Mrs. Johnson was telephoning the police, felt consciously guilty as a result and so hurried off, then there was evidence of their "consciousness of guilt."

After leaving Johnson's a policeman arrested the two on a street car entering Brockton. The officer went through the car and finding them, asked where they were from: Vanzetti replied that they had been at Bridgewater (instead of Cochesett), to see a certain friend Pappi. The policeman then arrested them, and when Vanzetti made as if to reach for his hip pocket, he told him to keep his hands in his lap. At this point in the testimony Vanzetti interrupted to say "You are a liar!"

When they started off, the officer cautioned them that he would shoot if they made a false move, and on the way, when Sacco began to reach under his overcoat, he told him to keep his hands out of his clothes. He asked Sacco if he had a gun, the latter replying that he had not; but a little farther on he tried the same action again. The policeman put his hand under Sacco's coat but found no gun; he cautioned him again, however, and Sacco said,

"I don't want no trouble." At the police station both men lied to the district attorney and the chief of police, tried to hide their actions on that day, the names of their friends and the places they had frequented, and Vanzetti even said that he did not know Boda. This behavior was claimed to indicate "consciousness of guilt": from the discovery of this guilt the defendants had tried to protect themselves and so had made the various movements described.

However, the men denied the police testimony that they had tried to draw pistols. Even had they so intended, their efforts were feeble, not at all those to be expected from the ruthless professional gunmen of the crime, who would more probably have tried to shoot their way out, especially with only one policeman to cope with. The carrying of guns in the United States is a widespread practice, besides, on the part of men by no means professional criminals. Sacco, moreover, had once been a night watchman and as such had got the habit of carrying a gun. Vanzetti had one because he believed he needed it for self-protection, as he often went to Boston on his purchasing trips with more than a hundred dollars on his person. They admitted their behavior at the garage and their lies at the police station. To explain both and escape the charge of murder it became unavoidable to show that they were radicals in daily fear of arrest and to make clear their radical associations, activities, and views. For this reason they feared being seized; at the time of arrest they felt "consciousness of guilt" of being radicals, not murderers, and so lied to protect themselves and their friends.

The facts to support their defense were strong. They were not innocent of the charge on which they *believed* they were being seized:

that of radicalism. It was natural, then, for them to lie and show evidence of peculiar conduct. Besides, they were not given any inkling, when arrested, of the fact that they were held for the South Braintree crime, but were informed they were detained as "suspicious characters." They were asked questions highly calculated to sound out their radical views and were never told that they were suspected of robbery and murder. They both believed the arrest was for a "political matter."

Under such conditions, what other conduct could have been expected of these men when, suddenly arrested, they were questioned not about the murders but about their radicalism? It would have been unnatural if they had acted in any other way. Certainly from the point of view of actual facts and evidence, the defense's case for consciousness of radicalism as a motive of peculiar conduct was quite as strong as that held by the prosecution for consciousness of murder. The so-called "consciousness of guilt" was wholly explicable: their ambiguous behavior on May 5th was accounted for.

Professor Frankfurter, in his excellent book on the case, quotes a large section from the record. One finds this citation teeming with irrelevancies of the most amazing character, full of uncalled-for insinuations highly calculated in their result, with the most deliberate playing-up of popular prejudices and the radical views hostile to them. The defendants' radical activities were luridly exploited, their pacifism displayed in wartime, their flight to Mexico to escape the draft highly elaborated, although as aliens they were not in fact eligible for the draft.

The judge allowed this to proceed; he even, and these are the words of Professor Frankfurter himself, "Connived at—one had almost written, cooperated in—the process."

The whole line of cross-examination conducted by Mr. Katzmann on the subject of radicalism was severely criticized by the Yale Law Journal and seems highly remarkable indeed when it is recalled that the defense was not permitted to attack the credibility of the prosecution witness Goodridge, who had admitted his guilt for a crime and was given probation through Mr. Katzmann. To recall the fundamental questions at issue, none of this lurid material had anything whatever to do with definite evidence that the two defendants were on the scene of the crime or committed it.

The persons summoned to act as jurors at the beginning of the case had been addressed by Judge Thayer with apostrophes to the "American soldier boy," their duty as loyal jurors, patriots, and Americans, together with eulogies of the land and the blessings of its government. Mr. Katzmann, in summing up to the jury, ended with an appeal to them to stand together as Americans, "men of Norfolk," against the alien. The judge then followed with his charge, which was admirably calculated to support and encourage the prejudices which had filled the atmosphere of the court. The duty of the jurors was here again recalled to them as that of loyal soldiers: the defendants, it will be remembered, were considered draft-dodgers.

The charge of a trial judge is fundamentally intended as an aid to the jury in clarifying the testimony, sifting the evidence, separating the pertinent from the irrelevant. All the evidence is not necessarily recited again, and in Massachusetts the judge is not even permitted to express his own opinion upon it. Correct placing of emphasis, caution against dangerous omissions, and concern for proportion and relevance are standard requirements usually respected. An examination of Judge Thayer's charge reveals

how greatly it is found wanting before these standards. The judge brought forth a document of twenty-four pages: Fourteen of them were devoted to legal abstractions and praise of the ideals of justice, which the jury was now asked belatedly to imbibe, after all the prejudice that had gone before. Two pages only were given to the highly complicated and vitally important identification evidence, dealing with it abstractly and never referring to the names of specific witnesses. The important alibis of the defendants were put aside in two paragraphs, with no reference to witnesses. And five pages were devoted to the matter of "consciousness of guilt," expounding in detail and with exact reference to testimony and witnesses the evidence of various police officers and others, with a highly developed treatment of possible inferences therefrom.

There is certainly a lack of proportion here, and very evidently the judge gave the impression that the case rested on the matter of "consciousness of guilt": and this, indeed, he later made clear to be his opinion. Yet again one must repeat that the question of identification, of whether or not the defendants were in South Braintree on April 15, was the real crux of the case: the treatment of this vital point in the charge was brief and superficial in comparison with the emphasis placed on "consciousness of guilt."

One page of the document was given over to the theory, never disputed by the defense, that the murder was motivated by robbery; yet nothing was said about the state's failure to trace the booty to Sacco and Vanzetti or establish them as professional gunmen. Another matter of weight received a perverted implication more scandalous than anything yet noted

has disclosed. Captain Proctor, a ballistic expert, had testified that the bullet taken from Berardelli's body was "consistent with" being fired from Sacco's pistol; and great importance was attached to the identification of this bullet. Though the expert had decidedly not identified the bullet as definitely fired by Sacco, Judge Thayer told the jury that Captain Proctor and another expert had in fact sworn that "it was his (Sacco's) pistol that fired the bullet that caused the death of Berardelli." Under such a misinterpretation, of course, Sacco was already convicted. This matter, one of the strongest bases of condemnation which can be found against the whole procedure in the case, will shortly be examined in more detail. As the jury saw it, from what it undoubtedly believed the judge meant by his plain words, Sacco's pistol had fired the fatal bullet, whereas Captain Proctor had testified to nothing of the sort.

As a result of all these outside influences, dubious tactics, misinterpretations and disproportions, combined with the prejudices of the times and the character of the defendants, the jury convicted the men of murder, rendering its verdict July 14, 1921.

III. THE NEW EVIDENCE: THE JUDGE AND THE TIMES

Throughout the trial exceptions had been taken to various rulings of the judge and they formed the basis of an application for a new trial. Judge Thayer refused it. The defense then discovered a large amount of new evidence, which was used as a foundation for other motions for retrial. The production of this evidence caused the entry into the case of Mr. William

G. Thompson, a very noted and skillful Massachusetts lawyer, whose adherence brought a wholly new aspect to the efforts of the defense. For he joined the counsel of Sacco and Vanzetti from a belief that the fairness of their trial was open to serious doubt and from a strong conviction of their innocence. He made his first appearance at the hearings on the motions for retrial, which were held on October 1, 1923, and he continued from that time to be the guiding spirit of the defense. Judge Thayer again denied the various motions presented.

These arguments newly advanced by the defense are in many cases highly technical; only a general and brief exposition of their purport is possible. They are five: the Ripley, Daly, Hamilton, Gould, and Proctor motions, the last by far the most important.

Ripley, formerly chief of police of Quincy and foreman of the jury in the trial, in both of which capacities he doubtless had influence on the other jurors, had with him cartridges of the type of some of those used as evidence; apparently discussion had occurred and comparisons been made by the jurors between Ripley's cartridges and the others. However, all evidence of any kind, especially in a capital case, must be displayed in court in order to allow cross-examination. By the unconventional introduction of this outside material to the jury, due process of law had been violated. After the conviction Ripley related this matter to the defense and it became the ground of a motion for retrial, since the comparison of the cartridges was manifestly illegal.

Daly was an old friend of Ripley. He stated to the defense that a few days preceding the trial he met Ripley, who told him that he was going to serve on the jury. Daly expressed his opinion of the innocence of Sacco and Vanzetti,

whereupon Ripley by his reply showed himself quite devoid of the necessary preliminary impartiality; consequently, he should never have been allowed on the jury.

Hamilton had had fifteen years' experience as an expert in the microscopic examination of exhibits and had been used in a hundred and sixty-five homicide trials throughout the country. He examined the bullet from the body of Berardelli under the compound microscope, compared it with the revolver found on Vanzetti, and gave his results in an affidavit, supporting his work with highly magnified photographs. He made a scrupulous comparison of scratches on the bullet and of the grooves within the barrel of Sacco's gun, and stated that these definitely removed the possibility that Sacco's pistol had fired the bullet.

Gould, a salesman, had arrived in South Braintree at about 3 p. m. on April 15, 1920, inquired where the employees of Slater & Morrill's were paid, and was shown the paymaster just leaving, whom he followed. As he continued down the street after Parmenter and Berardelli, the shooting occurred: the murder car came within five feet of him; a man with a pistol in one hand climbed from the back seat to the front on the driver's right, pointed the gun at Gould and fired. The bullet went through his overcoat. As the murderer who shot at him was claimed to be Sacco, Gould's view of him was thus better than that of any of the other witnesses; but although he gave his name and address to the police he was never called to the trial.

Afterward, seeing the defendants, Gould explicitly denied that either of them was the man in the car, and so made an affidavit to the defense. Nevertheless Judge Thayer denied this important testimony and in so doing dis-

played his own inaccuracy in a matter of fact, a typical blunder throughout the case. He discredited the affidavit, saying that Gould had not seen Sacco from April 15, 1920, till November 10, 1921, and yet carried a correct picture of him in his mind for eighteen months. However, it was plain to everyone that Gould had said that he had not seen Sacco on April 15, 1920, but another; hence he had never carried any image of Sacco in his mind, but claimed to have seen him for the first time on November 10, 1921, in jail. This inexcusable misstatement, if nothing else, speaks worlds about the judge.

The affidavit of Captain Proctor revealed the most notorious irregularity, possibly, of the whole case: an incident of a character so scandalous that it impeaches the conduct of the prosecution from beginning to end. As has been stated, one of the critical points of evidence was that which concerned the identification of a bullet from Berardelli's body as coming from Sacco's pistol. Five other bullets taken from the bodies, it was definitely proved, could not have been fired by either defendant. Concerning the one bullet Captains Proctor and Van Amburgh, put on the stand for the prosecution, had given expert testimony; and in instructing the jury the judge had told it that they had said that Sacco's pistol had fired the bullet.

Captain Proctor, head of the state police and in the Department of Public Safety for twenty-three years, an expert of twenty years' standing in the matter of bullets and revolvers, had given evidence in more than a hundred capital cases: a witness, evidently, of the highest reliability. If the prosecution could persuade the jury that the bullet was fired by Sacco's pistol, the defendants were doomed. The state

relied largely on the expert testimony, upheld it to the jury as the chief point of all, and put forward Captain Proctor, who, on being asked his opinion as to whether the bullet was fired from Sacco's Colt automatic pistol, said, "My opinion is that it is consistent with being fired from that pistol." Judge Thayer misinterpreted this: neither prosecution nor defense corrected him, and the jury believed what the judge had told it.

Following the verdict Proctor swore in an affidavit that the district attorney had repeatedly asked him, during the preparation of the case, if he could find any evidence which would justify the opinion that this particular bullet, which came from *a* Colt automatic pistol, came from *the particular pistol found on Sacco;* that he conducted special tests, with Van Amburgh, found no such evidence whatever, and so informed Mr. Katzmann; that at the trial, he having told the district attorney in advance that he must necessarily reply in the negative to a direct question, which would be highly favorable to the defendants and prejudicial to the prosecution, Mr. Katzmann therefore asked him a question which permitted him to make the answer quoted above. Proctor went on to say that he still held to this answer, but that he did not intend in any way to imply by it that Sacco's pistol had fired the bullet; that to a direct question he must have replied negatively, that Mr. Katzmann knew this and in that knowledge framed his question.

By a prearranged formula of words, then, between Katzmann and Proctor, evidence which might have been highly favorable to the defense was made terribly damaging to it and at the same time a major stroke for the prosecution. These words, though in themselves true

enough, were intended, without perjury, to give a false impression and did actually do so. The prosecution, knowing the real state of things, allowed judge and jury totally to misconstrue them, and indeed intended that they should.

To the Proctor affidavit, made the real basis of Mr. Thompson's motion for retrial, Mr. Katzmann and his assistant, Mr. Williams, replied with affidavits in which they merely denied that Proctor had been "*repeatedly*" asked about the matter or had "*repeatedly*" replied that his full answer must be damaging to the prosecution, and did not deny the fact of the misconstruction placed on his testimony by judge and jury. Still, Judge Thayer considered that the disclosures by Proctor constituted no reason for a new trial. Citing the questions and answers, he says that they were clear and unmistakable, which no one denies, and asks if there were anything "unfair or improper" in them: not this, one may reply, but the prearrangement, was the important point. He goes on to question why Captain Proctor did not say that no affirmative evidence whatever indicated that the bullet came from Sacco's gun; whereas the prearrangement had been exactly to avoid any question which should lead to such a statement. Why, he asks, if desirous of expressing his true opinion, did the witness use such language as "consistent with," his own selection of words; whereas the whole point at issue was that Proctor at the time was not desirous of expressing his true opinion. Proctor and Katzmann knew what it was, but the jury were to understand the opposite.

Judge Thayer also twisted the affidavit from its true meaning and misstated what both Proctor and Mr. Thompson had said in plain language. In addition, after the state had given

the utmost weight to the evidence of this witness at the trial, the judge now tried to belittle Proctor in his capacity as an expert, thus seeking to evade the injury done to the jury's decision by the misleading testimony; he uses the phrase "with his limited knowledge," and makes, according to Professor Frankfurter, "numerous misstatements of incontrovertible fact."

Yet he now admitted the true import of the Proctor evidence, which three years before he had conveyed to the jury in the opposite sense and with the highest opinion of its value. Again, after belittling Proctor as an expert and minimizing his words in 1924, in order to have a ground for the denial of the motion for a new trial, the judge two years later, to point out the strength of the case in the original trial, rehabilitated the expert for the purpose and voluntarily expanded his testimony, saying that Proctor had declared the bullet was "*perfectly* consistent with" being fired by Sacco's pistol.

All these inconsistencies leave one amazed. The judge's treatment of his own understanding of Proctor's words was highly changeable; and he also considered that the evasive affidavits of Katzmann and Williams were "clear and convincing," though as to what he did not say. And the Supreme Judicial Court of the state declared that the decision of Judge Thayer could not in law be reversed.

This opinion, sixty pages long, handed down on May 12, 1926, stated "no error" was to be found in any of Judge Thayer's rulings and the verdicts thus remained unaltered. It must be distinctly understood that only technical matters of law were examined and on them alone was this decision given. In England or

in New York supreme courts of appeal may review, examine, and judge the record of fact as well as the rulings in law, and decisions are made on the whole record of a case. But in Massachusetts only the conduct of the trial judge can be reviewed, that is, technical questions of law and nothing more. Thus, emphatically, the Supreme Court did not put its approval on the verdicts against Sacco and Vanzetti, but merely upon the actions of the judge. It is well to note this, for later Judge Thayer characteristically misconstrued or misrepresented this fact, saying the verdicts had been "approved by the Supreme Judicial court of this Commonwealth," when nothing of the sort had occurred.

As to the legal questions and exceptions, some rulings of the Supreme Court seem rather astonishing. The main issue, however, the focal point of importance, was whether Judge Thayer had observed the standards of Anglo-American justice, whether he had abused judicial discretion. Again and again the opinion states that he had not abused his discretion: a decision which seems to require for the term "judicial discretion" a totally new definition. For evidently, if this phrase has any meaning in the usual sense of the words and has not become merely a technical abstraction, to many persons at least discretion seemed to have been most terribly abused by this judge. But the Supreme Court was sure that Judge Thayer had behaved with utter calmness and impartiality, moved only by the desire "to do that which is just," according to the definition for the correct conduct of a trial judge given by the present Chief Justice of Massachusetts

Subsequent to the new evidence brought by the defense in the affidavits of Captain Proctor and the others, even more important proofs were discovered which not only seemed to make clear the innocence of the defendants but to reveal as well the real criminals. On November 18, 1925, a young Portuguese with a bad criminal record, Celestino Madeiros, who was confined in the same prison with Sacco for a holdup and murder at Wrentham similar to that at South Braintree, sent to Sacco through a jail messenger the following confession: "I hear by confess to being in the South Braintree shoe company crime and Sacco and Vanzetti was not in said crime. Celestino F. Madeiros."

This man had been convicted of murder for the crime at Wrentham and was waiting for an appeal to come before the Supreme Court Evidence of a criminal such as this is generally highly dubious, assuming as he does the guilt of another when he is soon to meet the penalty of death himself; but in this instance circumstances dispose of such a just suspicion at the outset. Madeirios was under sentence of death, but his appeal was pending and, indeed, it later gained him a new trial; at this critical time he endangered his whole chance for a new hearing and with it his life, for admission of his guilt in yet another crime was the most prejudicial course he could have taken. So harmful was it that, by arrangement with the district attorney, his confession was kept secret until the result not only of his appeal but of his new trial was known. The state moreover had to admit that he had never been promised money or aid by the Sacco-Vanzetti Defense Committee.

Witnesses were also found who testified that he had talked of participating in the South Braintree crime before the Wrentham holdup and hence before his arrest. What, then, motivated his confession? He knew the danger of confessions, for his own previous ones had convicted him of the Wrentham murder: he had been rewarded for them by sentence of death, which he knew would result. If he was credible in one crime, why not in another of identical character, admitted in the same manner in full likelihood of the same penalty? Besides, Madeiros had seen Mrs. Sacco and her children come to the jail and he "felt sorry for the kids."

At the age of eighteen, in 1920, he lived in Providence, already having a criminal record through his association with an Italian gang which robbed freight cars. One evening in Providence some of its members asked him to participate in a payroll holdup at South Braintree. It was a novel type of crime to him but they persuaded him to join them, for "they had done lots of jobs of this kind." As a new recruit of young years, he was assigned to a minor role, that of remaining in the back of the car with a gun to help hold back the crowd in case of an emergency. On April 15, 1920, the design was carried out, with three Italians also in the car and "a slim fellow with light hair" as the driver. Two automobiles were used to prevent identification, a Buick and a Hudson. About noon they came into South Braintree in the Buick; a man of perhaps forty years, the oldest of the Italians, did the shooting, while the others stayed at hand in the car; as the murder was committed, they drove up, took in their confederates and the

plunder, drove to the Randolph woods, changed to the Hudson and went back to Providence.

Madeiros arranged to meet with them in a saloon there the following night for a division of the spoils. Whether he did so and received his share he refused to tell; he also kept back the names of his companions and their identity, having recourse to lies if pressed. His admitted attempt was to shield his accomplices while confessing everything about himself, and in so doing he was clever. But in spite of this the skillful Mr. Thompson drew out important facts which made certain the identity of the gang and even more strongly strengthened what Madeiros had told. The Morelli gang, only too familiar to the authorities of Providence and New Bedford as a band of professional criminals, was established as the one which had figured at South Braintree. Several of its members were then under indictment in the United States District Court of Rhode Island for robbing freight cars, named by Madeiros as their usual occupation. Five of the nine indictments, besides, were for thefts of *shoe consignments from Slater and Morrill of South Braintree and from the factory next theirs*, and apparently the gang must have had a helper in South Braintree to spot the shipments. Probably this person noticed the paymaster's weekly trip with the payroll. The Morellis were under indictment but out of jail; they needed money for their defense in court, and crime provided their livelihood. . . . They remained free till May 25; then under conviction they were sent to Atlanta.

Other admissions of Madeiros confirmed the theory pointing to the Morelli gang: his descriptions of the men with him fitted the members of the gang, and identifications of independent

witnesses supported his. "The light-haired man" had been emphasized by the state as the driver of the car: the attempt to make the dark Vanzetti the driver had failed utterly. Steve the Pole, a member of the gang, fitted Madeiros' description of the driver, and two women working at the factory swore that he was the man whom they had seen for half an hour on April 15 near a car outside their window.

Two other witnesses at the trial had identified Joe Morelli as one of the murderers and Mancini, a member of the gang, as another. As American-born, the Morellis spoke clear English, explaining the trial evidence that one of the bandits had done so, whereas neither Sacco nor Vanzetti knew English well. The fatal bullet came from a 32 Colt revolver, and Joe Morelli had a gun of this type; the type of Mancini's revolver accounted for the other five bullets. The Sacco-Vanzetti theory explains only one, not the other five. The Morelli theory accounts for all members of the murder gang, the Sacco-Vanzetti theory for only two. It was admitted that if Madeiros had been present, the defendants could not have been.

Mike Morelli drove a Buick at the time: the "murder car" was a Buick. The New Bedford police had indeed suspected the Morellis of the South Braintree holdup but dropped the matter on the arrest of Sacco and Vanzetti.

After the crime there Madeiros was imprisoned five months for larceny of less than one hundred dollars, and on his release had twenty-eight hundred dollars in a bank, with which he took a trip to Mexico and the West; this seems to have been his share of the almost sixteen thousand dollars of booty, divided among six.

Need of money for court expenses provided the motive under the Morelli theory; no motive

is to be found in the Sacco-Vanzetti theory, nor any trace of the spoils.

Madeiros had tried to gain Sacco's attention previously and had made other confessions before the one cited.

Weeks, a man condemned with him for the Wrentham crime, said that Madeiros used his South Braintree experience in planning it, that he had admitted that the Slater and Morrill holdup was carried out by the Morellis; and Madeiros had made further damaging admissions to him and to other witnesses, declaring "that he would like to save Sacco and Vanzetti because he knew they were perfectly innocent."

The judge's duty lay simply in determining whether this new evidence might lead a new jury to a verdict contrary to that found at the first trial. Judge Thayer denied this possibility after studying the question for considerable time. His opinion, delivered on October 23, 1926, ran to a length of twenty-five thousand words and was one of the most astonishing documents which a legal mind has produced in modern times; rife with omissions, "discrepancies between what the record discloses and the opinion conveys," "misquotations, misrepresentations, suppressions, mutilations, demonstrable errors," and the most evident and damning emotional bias.

The appeal, of course, was carried to the Supreme Court of the state, which again had the task of deciding, in accordance with a very strict statement of required behavior, whether Judge Thayer had conducted himself conformably to traditional standards of fairness and impartiality. To do this, the whole record was to be searched. but as before the Supreme Court was not concerned with the weight of the new evidence, but simply with whether Judge Thayer had abused his "judicial discretion" in

deciding that this evidence was immaterial. If he could possibly have considered it immaterial, the Supreme Court could not reverse him, even though to a man it might believe the new evidence warranted the acquittal of the defendants. Thus a fatal weakness in the Massachusetts judicial system was revealed; the Supreme Court could not examine new evidence, nor could it express a minority opinion, whereas other high courts are able to do both. Men could thus be sent to death without an open examination of all the evidence as to their guilt and in spite of the weight of that testimony. Under these conditions the Supreme Court handed down on April 5 1927, after the second proceeding in review, its opinion that Judge Thayer had not abused his discretion and could not be reversed. By the very nature of the law it could give no opinion of its own on the new evidence.

To look backward again, in the early winter of 1919-20 A. Mitchell Palmer, Attorney-General of the United States, caused the Department of Justice to embark on an extravagant campaign for the arrest and deportation of "Reds," foreigners suspected of Communist sympathies. The years of the hysteria thus engendered formed an extremely troubled period in the history of the United States: everywhere the raids and proceedings went forward with extraordinary brutality and lawlessness. Decisions of United States courts throughout the country branded them in plain language as misconduct on the part of the Department of Justice; and Mr. Palmer never dared to have these decisions passed on by the higher courts.

Recently certain other facts have been made known. As has been mentioned, Sacco and Vanzetti, as notorious Reds had long been on the suspect lists of the Department of Justice.

Now it appears that the murder charge pressed against them was part of a collusion between agents of the Department and Mr. Katzmann to dispose of the defendants as radicals, not as murderers. Two former government officers, one of whom had been a postoffice inspector for twenty-five years, gave affidavits to prove it. Both the men are now in honorable civil employment.

The Department of Justice, it was set forth, considered Sacco and Vanzetti as "radicals to be watched"; was desirous of their deportation, but had no evidence on which to proceed. Without full legal grounds the Department was now cautious in its attempts, since the United States District Court for Massachusetts had already checked abuses in proceedings for deportation. When the men were arrested as murderers the required chance was supplied. The Department's agents themselves believed that the South Braintree murders were the work of professionals and that Sacco and Vanzetti had nothing to do with them. Nevertheless, they collaborated with Mr. Katzmann in the murder prosecution, because "*it was the opinion of the Department agents that conviction . . . for murder would be one way of disposing of these two men.*" This was the grave charge made by a man of long years in government service.

A government spy was installed in a cell adjacent to Sacco's to win his confidence and obtain all possible incriminating evidence. An "under-cover man" was introduced into the Sacco-Vanzetti Defense Committee. A spy was placed as a lodger in Mrs. Sacco's house. The agents of the Department itself supplied to Mr. Katzmann information about the radical activities of Sacco and Vanzetti. These efforts occasioned a quantity of correspondence between Mr. Katzmann and the Department's Boston

agents; two copies of such documents went to Washington; one was retained in Boston.

These records, though of the highest relevance to the real guilt of the defendants, have not been made available and Attorney-General Sargent was vainly appealed to in the matter. In the hearing on the last motion for a new trial Letherman and Weyand, the two men who made the charge of collusion, were subjected to abuse from the state's representative as guilty of a breach of loyalty and as having betrayed the secrets of their department; on the other hand, no disclosure of the facts was made, nor was the charge of collaboration to obtain a conviction denied either by the agent, West, or by Mr. Katzmann.

IV. PUBLIC CRITICISM

In its early period the case of Sacco and Vanzetti attracted considerable attention, especially, at first, from radical or labor bodies, but very soon from the general public as well. Gradually, in the course of the various proceedings, this interest became first nation wide, then world wide. The character of the circumstances drew to the defense of Sacco and Vanzetti individuals from all social classes; and the list of those who in some manner or other protested against the irregularities or injustices of the case reads like a roster of the finest spirits in American thought and life. Likewise the decision of the courts drew its vigorous and distinguished champions. In fact, the Sacco-Vanzetti case became the "cause célèbre" of modern times, comparable to the Affaire Dreyfus in France just before the turn of the century.

Since the great value of any court action lies in its social significance, it is important to survey briefly the developments the case provoked beyond the confines of Judge Thayer's court

room. The defense, of course, had soon been organized in a systematic manner under the Sacco-Vanzetti Defense Committee, whose chairman was John Barry. Aldino Felicani, Joseph Moro, and Mary Donovan were the other executives; and besides the support of thirty-six labor organizations from all sections of the country, the Committee was backed by the American Civil Liberties Union, the American Federation of Teachers, the Farmer-Labor Party of the United States, the League for Democratic Control, the New England Civil Liberties Committee, the Socialist Party, and the Sons of Italy. Hundreds of thousands of dollars were poured into the defense by friends and sympathizers, and everything was done to secure justice both by the important organizations named and by many private citizens. A Sacco-Vanzetti Defense Committee was organized in Paris, and throughout the world the effort for relief took organized form. Thus the movement in behalf of Sacco and Vanzetti became of truly national and international significance.

The decisions of the judge were as heartily supported as they were decried; the traditionally accepted impartiality of the law and the courts was upheld as a guarantee against miscarriage of justice. But after Judge Thayer's denial of the last motion for a new trial and the appearance of his opinion thereon, old doubts were confirmed and new ones sprang up in abundance. This document, with its shameful evidence of emotional bias, won to the defendants many who had till now been neutral or even hostile to them. Converts were made among the conservatives and everywhere the demand for justice was redoubled. The *Boston Herald*, for example, had consistently supported the original verdict, but in its issue of October 26, 1926, it editorially reversed its stand and condemned Judge Thayer's opinion in quiet but

emphatic terms, declaring for a new trial in which all the evidence should be sifted again.

However, Mr. Moorfield Storey, in a letter to the *Herald* in its issue of October 27, 1926, argued for the original verdict on the basis of the strength of the administration of criminal law in Massachusetts under ordinary conditions, an argument which was constantly used by the champions of the death penalty for Sacco and Vanzetti.

Yet Mr. Storey himself had forcefully condemned, in 1923, the "reign of terror" which featured the anti-Red campaign of 1919-20, and in the midst of which the case of Sacco and Vanzetti was conducted: these, one may remark, were far from ordinary conditions.

Dr. Morton Prince of Harvard, in a letter to the *Herald* for October 30, 1926, under the title "A Psychologist's Study," demolished the identification testimony of Miss Splaine and asked why the usual "parade" should have been so strangely abandoned in this case. And there were many other expressions of dissatisfaction and protest. Indeed, as a result of the position of the *Herald* and the accumulating evidences of injustice, some of the most important and often essentially conservative citizens of Massachusetts were brought to the support of the defendants.

Among those who called for a new hearing were the Harvard professors Frank W. Taussig, the nationally known economist; Samuel E. Morison, the historian; W. E. Hocking, the distinguished philosopher; and Dean Sperry of the Harvard Theological School: as well as Reginald H. Smith, author of "Justice and the Poor"; President Neilson of Smith College and President Comstock of Radcliffe College; the novelist, Mrs. Margaret Deland; Mr. John F. Moors, a Boston banker and member of the

Corporation of Harvard University; Mrs. Glendower Evans, a prominent Boston society woman; and Dr. Samuel McChord Crothers, liberal Unitarian minister and distinguished writer.

In March, 1927, Mr. Felix Frankfurter, a notable lawyer and professor in the Harvard Law School, issued his memorable book, "The Case of Sacco and Vanzetti." He was plainly aligned with those who called for a new trial; and now he analyzed the case from its inception to its current developments, exposing legal flaws and manifest injustices in effective and forceful terms.

Nor was Professor Frankfurter alone in his position. In a letter to the *Harvard Crimson* for April 13, 1927, Mr. William E. Hocking, professor of philosophy and a veteran of the Harvard faculty, condemned the trial of Sacco and Vanzetti; expressing dissatisfaction with the legal machinery of the Supreme Court, and calling for a new hearing, he characterized the proceedings as demonstrating the clan loyalty of lawyers, who felt it incumbent upon them to save the face of a judge subjected to public criticism rather than to safeguard justice.

Two days later it became known that two hundred and five out of three hundred men in the graduating class of the Harvard Law School, many of whom were future members of the Massachusetts bar—among them the leaders of the various Law School organizations—had signed a petition to Governor Fuller, stressing the weight of the new evidence and the powerlessness of the Supreme Court to consider it, and recommending in this emergency the extension of executive clemency to the condemned men. Simultaneously the Harvard Liberal Club petitioned the governor to appoint an impartial committee to review the evidence.

On April 25, 1927, the opposite viewpoint was strongly set forth: The *Boston Transcript*, the typical Tory newspaper of Boston, always hostile to the defenders of Sacco and Vanzetti, spread upon its first page a sensationally headed attack upon Professor Frankfurter by J. H. Wigmore, Dean of the Law School of Northwestern University, characterized by the *Transcript* as the "accepted authority on legal evidence."

The article was rather long, maliciously personal in tone, and Professor Frankfurter was constantly referred to as the "plausible pundit of a leading law school." Mr. Wigmore sought to show that Professor Frankfurter had made false statements of fact and deliberate misrepresentations in his survey of the case; these were all matters of law or of evidence which have been discussed previously. Concluding, he introduced a group of newspaper clippings concerning bomb outrages supposed, more or less vaguely, to have been committed by Sacco-Vanzetti sympathizers; and he elaborated the conservative conception of a widespread terrorist fraternity which was supporting the defendants against the law of Massachusetts and to which Professor Frankfurter, by his book, had shamefully given aid.

The Harvard Professor replied on the following day through the *Boston Herald* and the *Harvard Crimson*. Leaving aside the sensational and unfounded insinuations of radical partisanship, he took up all relevant points set forth by Mr. Wigmore and discussed them one by one, in each case refuting the assertions of his excited detractor and quoting directly from the record of all questionable issues. The result was disastrous for Mr. Wigmore. For Professor Frankfurter, before issuing his book, had published a shorter and necessarily less

detailed survey of the case in the *Atlantic Monthly;* and it became devastatingly plain that Mr. Wigmore had read only the magazine article, paying no heed to the more explicit and fully documented book, before rushing into print to make grave but baseless charges against its author.

Professor Frankfurter, it is to be noted, in contrast to his vehement and heated opponent, showed the utmost calmness in return. In fact, Dean Wigmore, thus answered, appeared completely ridiculous, and Professor Frankfurter had vindicated himself to the satisfaction of all. There was no reply.

The effect of this controversy was heightened by the announcement on the following day, April 27, 1927, that a group of professors in the Law School had sent a petition to Governor Fuller of Massachusetts asking the appointment of a "disinterested board to be composed of lawyers and laymen of standing in whom the people have confidence," to examine the case fully and report on "their findings of fact, their opinions, and their conclusions."

This distinguished group of petitioners was headed by Dean Pound, easily the most important and significant figure in American Law today, under whom the Harvard Law School has reached a position of notable supremacy in method and in research. This great expert in law and the fifteen professors who signed the petition with him expressed by it their opinion that if the courts of Massachusetts seemed incapable of rendering justice satisfactorily, then "the wrong should be righted and Massachusetts should show that where justice is involved she will go above and beyond the technical procedure of her courts." At the same time they disclaimed any opinion on the merits of the case; they merely asked the appointment

of an impartial committee whose findings should aid the governor in any consideration of executive clemency to the defendants. In the ranks of those who asked for such an impartial review must be added the name of William Lawrence, Episcopal Bishop of Massachusetts.

At this time the general agitation throughout Europe and America had reached a serious point, and public sentiment itself demanded such a step. Due to limitations of space, it has been possible to describe only the most important aspects of this wave of protest and condemnation, which included many more manifestations than those briefly set forth here. But in spite of the intense and widespread popular demand for a review of the case, one may perhaps doubt, without any implication as to the governor's motives or intentions, whether he would have responded, as at length he did with the appointment of his advisory committee, had not that measure been so emphatically proposed by individuals whose prestige and reliability could not be questioned. The important fact is that Governor Fuller did appoint the desired advisory committee to review the facts and communicate to him its conclusions. However, the frankly expressed attitude of many of the most prominent individuals in American life had made it practically impossible to refuse such a measure.

V. THE LOWELL COMMITTEE AND ITS REPORT

Since the Supreme Judicial Court for the second time had refused to reverse Judge Thayer's denial of a new trial, every usual legal recourse to obtain a hearing on the new evidence was exhausted. It thus became im-

possible even for the Supreme Court or the Governor to order another trial; there remained only the possibilities, on the part of the latter, of recommending the pardon of either or both the condemned men; of recommending their commutation to life imprisonment or to a term of years; and of non-intervention.

The last course, by which Sacco and Vanzetti would have been executed without even a reference to the new evidence discovered since the first verdict, had been made impossible by the powerfully supported demand for an impartial rehearing. Sacco and Vanzetti had been condemned to be executed during the week of July 10, 1927, and were now respited till August 10; before that date should arrive there was opportunity for a new survey of all relevant matters, as a result of which Governor Fuller either would refuse to intervene, allowing the death penalty to be carried out, if he found the new evidence worthless, or would recommend the pardon of the defendants if he found it convincing. It was understood that these were the two probable courses; the possibilities of commutation merely lay open.

Since Sacco and Vanzetti were either definitely guilty or not guilty, either death or freedom must logically be decreed to them. Commutation could hardly be a sensible solution.

In order to review the case and obtain a satisfactory basis of judgment upon which to refuse clemency or grant pardon, Governor Fuller undertook a personal investigation of the case on his own account, thus invoking for the first time in the history of the state the Governor's power of review; and he also appointed an advisory committee for the same purpose

whose work was to be entirely separate from his. When this committee had concluded its investigation it would report to the Governor; and he, combining its conclusions with those independently arrived at by himself, would draw from them a final decision which would settle the fate of the condemned men.

At first glance this seemed the long-desired solution, which could hardly fail to give impartial and trustworthy results. But it is important to note that by this arrangement the lives of Sacco and Vanzetti were entrusted to the discretion of only four men, the Governor and his committee of three, and in the final judgment to only one: this was wholly different from an open examination in court according to due process of law, with counsel for both sides, before a jury of twelve.

The advisory committee, as appointed by Governor Fuller, consisted of Mr. A. Lawrence Lowell, Mr. Samuel W. Stratton and Mr. Robert Grant. Mr. Lowell is the president of Harvard University, a distinguished innovator in education, an author of important books, and a very able lawyer of Boston. By tradition and connections he stands among the older aristocratic and conservative elements in Massachusetts.

Mr. Stratton is president of Massachusetts Institute of Technology, a school whose directing forces are largely the same as those of Harvard. Both men are at the head of institutions behind which lie enormous resources of related capital, and it is presumable that they would not occupy their present positions if they were not identified in some measure with the capitalistic wealth and conservative tradition of the ruling factors in the state.

Mr. Robert Grant, a former judge of the probate court, is a notable lawyer. All three men were well advanced in years; they represented legal capacity and public service of a high order; they were certainly men of a type who could be called "distinguished citizens of Massachusetts."

The committee held its sittings during midsummer of 1927, beginning on July 25 to hear the arguments of counsel; at length it finished its report on July 27, 1927. Meanwhile Governor Fuller conducted his own investigation. Sacco and Vanzetti were visited in prison several times; the evidence was reviewed and necessary conferences were held. The committee first read the record and the various affidavits and documents concerning the motions for a new trial, then heard all available witnesses and all evidence which opposing counsel desired to present.

By its own declaration, all the testimony brought to the committee was heard in the presence of both counsel; none of the three members received evidence separately; the counsel were given an opportunity to meet and rebut all testimony and to hear and question all the witnesses who appeared excepting Judge Thayer, Chief Justice Hall, and the jurors. Mr. Katzmann, to whom the committee wished to extend this exception, consented to be questioned by Mr. Thompson. The only communication made by the Governor to the committee was the suggestion of one or two persons whom it would be well to examine. The scene of the murder was visited and Madeiros, likewise condemned to death and respited so that his testimony might be available, was interrogated in prison.

Apparently all measures were conscientiously

taken to be scrupulously fair. The Governor, receiving the committee's report, dated July 27, 1927, finished his own review a few days later, calling in Judge Thayer for a final conference; but his decision was delayed by the temporary illness of his son. His verdict, expected on August 3, when he met with his council, by whom the decision had also to be considered, was given out a little before midnight on that day and communicated to the condemned men by Mr. Thompson on August 4. As is well known, in a document of twenty-five hundred words he decided that Sacco and Vanzetti were guilty, refused clemency, and declared that the law should take its course. The report of the Lowell committee was made public on August 7 and published complete in the *New York Times* for that date, to which those who wish to study it in full are referred.

We have now to consider the circumstances which surrounded the investigations and the value of their results. From the first both inquiries were conducted in complete secrecy. The Lowell committee gave as the reason for this fact that much publicity had attached to the case, that many witnesses were unwilling to testify under conditions in which they might be exploited by journalists or by the propagandists of the Defense Committee, that therefore, since the committee itself as a private body had no power to compel their presence, it had resorted to secrecy so that all witnesses would feel themselves personally secure in coming before it.

Presumably the Governor's reason for secrecy was of a like nature, though I have found no official statement to that effect. However, the nature of the facts demanded an open and

public examination; both inquiries were seriously compromised by the secrecy in which they were conducted, and by the rumors which consequently got about as to what was occurring. Again and again counsel for the defense protested against this secrecy to no avail. Certainly public opinion also had demanded, if anything, an open inquiry, every phase of which should have been made known as it progressed. It seems likely, too, that protection could have been extended to the witnesses who balked at publicity without keeping back the whole substance and the important incidents of the inquiry which did not personally concern them.

For the report of the Lowell committee, which gave its results, the reader is referred to the full text, as it cannot be analyzed in detail here. Briefly, the committee set before itself three questions: 1. Was the trial fairly conducted? 2. Was the subsequently discovered evidence such that a new trial ought to have been granted? 3. Is it convincing beyond reasonable doubt that Sacco and Vanzetti are guilty of the murder?

The committee held that the trial and the conduct of the judge were "scrupulously fair"; that the new evidence was immaterial and had not justified the granting of a new trial; that the condemned were, beyond reasonable doubt, guilty. But it was forced to find that Judge Thayer had seriously abused "official decorum" by talking about the case outside the court room during and after the trial.

Since the proceedings were kept secret while in progress, every item and detail of them should have been made public when they were finished, if only to show a satisfactory ground for a decision. Instead, the report is simply a

summary of conclusions and opinions, together with a very light and partial analysis of certain details of evidence, mainly those which tended to convict the defendants.

Again and again the committee says that it "believed" that such a fact was true or untrue, but hardly ever gives *the grounds upon which* it believed or disbelieved. For this reason the manner in which it simply said that it did not believe the alibis of the defendants but did believe the witnesses against them, the manner in which it peremptorily dismissed as worthless the confession of Madeiros, the manner in which it arbitrarily accepted some facts and refused to accept others of apparently equal worth is essentially unsatisfactory.

Many of the statements in which evidence is evaluated seem incredible and at times even naive; in places the essence of certain facts seems deliberately overlooked or interpreted with a new and unsuspected meaning. Trifling points are stressed and important ones abruptly discarded. Perhaps if the grounds for these conclusions had been fully stated, they would have appeared in a better light; for the essential purpose of the whole investigation was not the beliefs or disbeliefs of the committee, but a full analysis of why they believed and why they did not believe.

There were no further effective measures. The Governor's review, concerning which the same criticisms can be advanced as against that of the Lowell committee, though it seems also to have been thoroughly honest in intention, was the last resource.

On July 17 the two men had begun a hunger strike as a protest against the excessive secrecy of the Governor's investigation, but perhaps

also as an attempt to draw public sympathy and force the committee's hand, or from sheer despair. In any event it was an unwise measure; Sacco continued it steadily, though Vanzetti after a time abandoned it for the most part.

Presently they were said to be showing the effects of the fast, and Vanzetti's reason seemed to be affected. However, it appears certain, according to the opinions of doctors, that neither of the men became mentally deranged, though Sacco may have shown morbid psychological manifestations due to confinement.

The men were moved into the death house at Charlestown prison on August 2. Meanwhile large mass meetings were being held and demonstrations and protests were redoubled by active sympathizers. When the final decision of Governor Fuller was communicated to them, Sacco and Vanzetti remained calm. Vanzetti had at times been optimistic; but Sacco, it is apparent, had never expected any other result.

VI. THE END: EXECUTION AND PERSECUTION

Up to the moment when Sacco and Vanzetti were executed, somewhat past midnight on August 22, 1927, their counsel and friends never ceased to work to free them. Various legal maneuvers of a technical nature were resorted to, never with much hope of success; but every recourse was exhausted to no avail. Never was there a more frantic and determined attempt to obtain relief for condemned men at the last moment than that employed in behalf of Sacco and Vanzetti.

On August 4 Mr. Thompson and Mr. Herbert Ehrmann, who had skillfully directed the many efforts in behalf of the two men, retired from the case and Mr. Arthur D. Hill, a Boston lawyer, was retained by the Defense Committee as

the new counsel; the reason for the retirement was that the new attorney would be "less disturbed than we by a sense of injustice," and in a long statement Mr. Thompson criticized the secrecy of the Fuller investigation.

Guards were now placed at the State House in Boston and at the homes of the Governor and various judges. Admission to the men at the Charlestown prison was refused to members of the Defense committee, because the warden had become angry at the publication in the press of letters from Sacco and Vanzetti which the visiting members were said to have smuggled out of the jail. Evidently then, it was not right that the condemned men should make known their feelings to the public.

Attorney Hill meanwhile conferred with a number of men who had been identified with the case, including Professors Frankfurter and Francis B. Sayre of the Harvard Law School; the latter, the son-in-law of the late President Wilson, declared that action would probably be taken in the United States District Court of Boston.

In fact, on August 7, three legal moves were begun by the new counsel. On August 8 they brought before Justice George A. Sanderson of the State Supreme Court petitions for a writ of habeas corpus, a stay of execution, and a writ of error, all of which were denied on grounds of lack of jurisdiction and of impropriety. Petitions for a new trial on the basis of newly discovered evidence and for a stay of execution were brought before Judge Thayer. (One item of the new evidence was an American Express Company receipt for a barrel of live eels sent from Boston to Vanzetti in Plymouth on December 20, 1919; the defense claimed that they were delayed and were marketed by Vanzetti on the day of the Bridgewater crime, for which

he had been sentenced before the Braintree murder trial.)

Mr. Hill asked Chief Justice Hall to assign some other judge to hear this last motion for a new trial, but Justice Hall refused, saying that it was in accordance with precedent that Judge Thayer should preside.

As was to be expected, Judge Thayer denied it on the ground of lack of jurisdiction; but he entertained a motion for revocation of sentence, only to deny it and to refuse a stay of execution on August 9, although on the 11th he allowed exceptions to all his rulings, thus opening another avenue of escape. Another petition for a stay of execution was addressed to Governor Fuller.

The Defense Committee planned for a death watch for the condemned men, the execution being set for the 10th, and called for a national march on Boston. Protest strikes and demonstrations occurred in South America and Europe. On August 9 several alibi witnesses for Vanzetti appeared at the State House and asked, since the Governor had refused to believe them and hence implied that they had lied in court, to be arrested as perjurers. Everywhere tension reigned, and double guards were set over the Charlestown prison, bridges and public buildings.

President Coolidge let it be known that he would not interfere whatsoever in the case. Strikes occurred and parades of sympathizers were broken up by mounted police in New York; in Boston raids and arrests crushed the spirit of a sympathetic strike in the needle trades industry.

From the decision of Judge Sanderson in refusing a writ of error the defense counsel took an appeal to the full bench of the State Supreme Court. To give time for this and other

legal action Governor Fuller and his council on August 10, within thirty-six minutes of the time set for execution, granted a respite till August 22, a reprieve of twelve days. On the same day Justice Holmes of the United States Supreme Court denied a writ of habeas corpus on the basis of lack of authority. But in spite of this reverse, the respite gave renewed hope to the condemned men, who were now removed from the death house. A crisis had been passed and the army of two hundred and fifty police who had mounted guard over the prison with machine guns was withdrawn.

On the 15th Sacco, who had consistently maintained his hunger strike, broke his fast under the threat of forced feeding. The following day the full bench of the Supreme Court heard the various arguments of counsel, and at the conclusion a new writ of error was also filed. On the 19th the court denied all the defense's exceptions to the decisions of Judges Sanderson and Thayer and the writ of error as well, wholly on grounds of law. The Supreme Court of the United States now alone remained; and the defense took steps to bring the record of the case before it and obtain a stay of execution.

One of the associate counsel left for Washington to file a petition for a writ of certiorari. On August 21 Acting Attorney-General Farnum offered to open the files of the Department of Justice to Governor Fuller, the Attorney-General of Massachusetts, or the Lowell Committee, but added that the government had no jurisdiction over the case and that a checking of the files had shown no evidences of collusion between state and federal agents in obtaining the conviction of Sacco and Vanzetti, as the defense contended.

However, one must note that the opening of these files had been requested before and had been refused; and the offer to make them available now came surely at a very late date. Why had it not been made before, when time was not so precious as it was so near the end of the respite of the condemned men, within a few hours of the moment set for their death? However, belatedly as the chance came, appeal was instantly brought that the Lowell Committee undertake an examination of the files, and Governor Fuller was asked by Arthur Garfield Hays of New York and Francis Fisher of Philadelphia for another stay of execution to permit this to be done.

Meanwhile on August 20 a stay of execution was asked from Justice Holmes of the United States Supreme Court, and refused; and a few hours later on the 21st Justice Brandeis also declined to intervene on account of personal relations of members of his family with the case; for his wife was a friend of Mrs. Glendower Evans, a Boston society woman who had greatly interested herself in behalf of Sacco and Vanzetti.

Mr. Hill then sought Justice Stone, and Mr. Musmanno, his associate, attempted to communicate with Chief Justice Taft. A petition for a third respite had been filed on August 20 with Governor Fuller. However, the Governor had declared that if action of individual members of the United States Supreme Court was unfavorable he would grant no further stay; and as the action of the Justices was at least negative, the Governor refused further relief. Therefore the original verdict of Judge Thayer's court, reached six years before, was carried out: Sacco and Vanzetti were executed a little

past midnight on August 22, 1927, and the long and desperate struggle to save them was ended.

On the 22nd the atmosphere of tension and frantic activity which had featured the last day of the first respite, August 10, returned once more. The Defense Committee called again for a death watch at the State House and at Charlestown prison. Thousands of appeals for clemency poured in upon Governor Fuller. To the distinguished names of those who had already protested others were now added; at this late date, after every sort of legal procedure, many persons of authority and importance made it clear that they were still not satisfied as to the justice of the verdict.

A petition was addressed to Governor Fuller from prominent American authors and thinkers, among whom was such a one as Ida Tarbell, the noted biographer of Abraham Lincoln. From every corner of the world came the appeals; and one hundred prominent liberals planned to prevail upon the Governor for sympathetic action. A strike of garment workers was called as a protest. On the 21st Boston Common was the scene of a riot: At the announcement that pickets would appear in spite of the cancellation of permits, and when about twenty persons assembled bearing placards relating to the case, a crowd of ten thousand people gathered. Mounted officers charged into the masses and set them in motion; many arrests were made. It was in the face of demonstrations of this sort that the Governor refused to intervene again.

The scene in the death room at Charlestown was simple and brief. The two men had refused the so-called "consolations of religion"—and to offer them in this case was surely the

irony of bitter ironies—going to their death with quiet courage, holding to the principles by which they had lived, and refusing to the end the Catholicism of their childhood. Neither showed any emotion. They said farewell to the guards. Vanzetti, in a last show of feeling, forgave some of his enemies. And in a few moments they were dead. Madeiros was executed the same night.

In the city outside pickets waited and watched. But this simple service of sympathy and protest was not to be tolerated under the ordinances of the city of Boston as administered by its vigilant police; it was regarded by them as a menace to the public order. Consequently more than a hundred and sixty of these sympathizers were arrested and fined; a few appealed who had pleaded not guilty. They were Edna St. Vincent Millay, the famous poetess; Ellen Hayes former professor at Wellesley College; William Patterson, president of the American Negro Congress; Miss Catherine Huntington of Beacon Hill, Boston; Ella Bloor of San Francisco; and John Howard Lawton, the playwright. Arthur Garfield Hays appeared for the whole body of pickets and appealed for a writ of habeas corpus for Powers Hapgood of Pittsburgh, who was held at the Psychopathic Hospital for observation after being arrested for the fifth time. In Charlestown nine were arraigned for parading, eight of whom appealed.

The demonstrations following the execution were not as decided as had been expected, but all over the world the death of the two men was denounced. For three days the bodies lay in state, devoid of all religious appurtenances; crowds came to view them. The funeral march

was held on Sunday, August 28: along eight miles of city streets, under the eyes of more than one hundred thousand people, the bodies of Sacco and Vanzetti were borne to Forest Hills through the rain. Thousands joined the procession and thousands watched. The crowd was orderly, but when the police checked the following throngs, outbursts of protest occurred, which were sternly repressed. Hearses carried the bodies; in cars following them rode Mrs. Sacco, Miss Luigia Vanzetti, sister of Vanzetti, Sacco's son Dante, and Aldino Felicani, Gardner Jackson and Mary Donovan of the Defense Committee. Mrs. Sacco and Miss Vanzetti fainted on the way and did not enter the crematorium chapel at Forest Hills. About a hundred sympathizers filled the small building where the last service was held. They sat in silence for the most part, though a few women wept, while Miss Donovan pronounced the funeral eulogy. It was a dramatic indictment of the ruling class, which had condemned Sacco and Vanzetti to martyrdom as symbols of the workers and of their revolt from bondage. At the end, her voice broke, and pointing to a red band worn on her right sleeve, she spoke the words printed in black upon it: *"Remember—justice crucified—August 23, 1927."*

The ashes of the two men, whose bodies were cremated at Forest Hills, were divided, half to be returned to a Malden cemetery, half to be carried to Italy for burial.

Death masks had been made of Sacco and Vanzetti and were distributed in New York, where on August 29 Mrs. Sacco was given an ovation and a mob of ten thousand persons who assembled was dispersed by the police. The Defense Committee began to draw up its

financial statement, and announced that the entire records of the case would be published.

The case of Sacco and Vanzetti has now been completely reviewed. While one hesitates to accept with certainty any dogmatic viewpoint, the inference of present developments is unavoidable: there is much more to come before the public. After the lull of discouragement and depression which naturally followed the execution, activity is being renewed. One needs only to mention as an example such a work as Upton Sinclair's *Boston*, a novel by one of the most prominent and skillful of Socialist propagandists, who has, moreover, investigated this case to the bottom. One may add, besides minor events, the valuable enterprise of the Defense Committee, which in time expects to publish the entire record of the case. By placing these documents before the public a stronger basis for true judgment will be provided than any publicity so far has done; and reliable commentators agree that the record is in itself the most scathing indictment of the prosecution that the most rabid partisan could desire. Sooner or later, too, the files of the Department of Justice bearing on the prosecution of Sacco and Vanzetti must be searched and the results made known. Only then, after all the facts are before us, shall we need to agree on the absolute truth.

Though the two men are lost now beyond recall, the case of Sacco and Vanzetti, it appears, is not concluded: some of its most important developments are before us. We may not prophesy their issue: they are for the future to see.